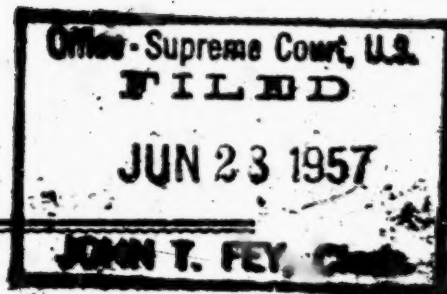


No. [REDACTED] 231



**United States Court of Appeals
FOR THE SECOND CIRCUIT**

UNITED STATES OF AMERICA,

Appellee,

—VS.—

SALVATORE BENANTI,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

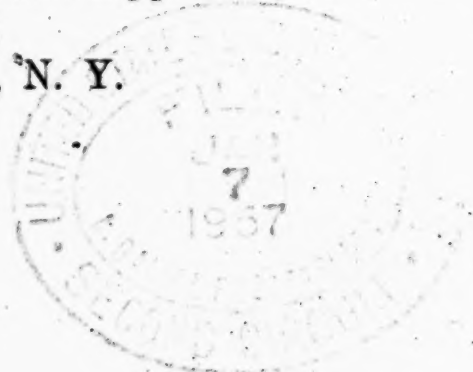
DEFENDANT-APPELLANT'S APPENDIX

GEORGE J. TODARO,

Attorney for Defendant-Appellant,

135 Broadway,

New York, N. Y.



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Docket Entries

CRIMINAL DOCKET

(A)

Crim. No. 5 150/312

THE UNITED STATES

—versus—

SALVATORE BENANTI

Defendant

T 26 Soc. 5008 (b) (1) and 5642 USC
Unlawfully possessed and transported
a quantity of untaxpaid distilled spirits.

2 counts

PROCEEDINGS

Date

Proceedings

8/ 3/56—Filed Indictment

8/ 9/56—Pleads not guilty. Released on own recognizance. See C 150-257 for bail. WALSH, J.

8/ 9/56—Filed Notice of Appearance of Atty. Lester H. Solomon 160 Broadway.

10/ 9/56—Trial began before Walsh, J. and jury. Trial concluded. Verdict—Deft. guilty on both counts —Pre-sentence report ordered. Sentence set for 10-30-56 and released on own recognizance.

WALSH, J.

Indictment

(36) UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The Grand Jury charges:

On or about the 10th day of May, 1956 in the Southern District of New York, SALVATORE BENANTI the defendant, unlawfully, wilfully and knowingly possessed a quantity of distilled spirits, the immediate container(s) thereof not having affixed thereto in such manner as to be broken on opening the container, stamps evidencing the tax or indicating compliance with the provisions of Chapter 51, Title 26, United States Code, to wit, eleven five gallon cans (Title 26, Sections 5008(b)(1) and 5642, United States Code).

(37) SECOND COUNT

The Grand Jury further charges:

On or about the 10th day of May, 1956 in the Southern District of New York, SALVATORE BENANTI the defendant, unlawfully, wilfully and knowingly transported a quantity of distilled spirits, the immediate container(s) thereof not having affixed thereto in such manner as to be broken on opening the container, stamps evidencing the tax or indicating compliance with the provisions of Chapter 51, Title 26, United States Code, to wit, eleven five gallon cans (Title 26, Sections 5008(b)(1) and 5642, United States Code).

PAUL W. WILLIAMS
United States Attorney

B. J. BUTTENWEISER
Foreman

Testimony

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

New York, October 9, 1956,
10.30 o'clock a.m.

Before :

HON. LAWRENCE E. WALSH,

District Judge.

Appearances :

PAUL W. WILLIAMS, Esq., United States Attorney,
for the Government;

By HERBERT C. KANTOR, Esq., and ARNOLD G.

FRAIMAN, Esq.,

Assistant United States Attorneys.

GEORGE J. TODARO, Esq., Attorney for Defendant.

(2) (The following took place in the robing room before the empanelling of the jury:)

Mr. Todaño: Your Honor, I have just been retained by Mr. Benanti. I spoke to him last Saturday. We agreed upon a fee which has not yet been paid. I expect to be paid sometime today.

The former attorney, Mr. Solomon, I understand, was in a peculiar position. He represented two defendants—they are brothers—and one has become a Government witness. Is that correct?

Jolloguy

Mr. Kantor: Suppose I state the facts. This case was marked ready and passed about three weeks ago. It has been moved from day to day ever since then.

We were assigned out of the calendar part on Friday. On being assigned out, Angelo Benanti, one of the brothers, pleaded guilty. The other brother is Salvatore Benanti, and he is the defendant that is in this part now.

Mr. Lester Solomon, as far as I know, has been counsel for both of these brothers for the period of the case. He has been in court every day and answered ready for each of them when the case was marked.

I received a phone call yesterday saying that he was going to substitute Mr. Todaro for himself as (3) trial counsel. I spoke to Mr. Solomon later on last night to confirm that. I also spoke to Mr. Todaro earlier yesterday, and Mr. Todaro said at that time there would be no delay, he was ready to go to trial.

Later on that afternoon, he called me back and said he thought there might be some delay. At this time I called Mr. Solomon and asked him what the situation was on the substitution. He said he felt he could not represent both defendants any longer.

I asked him why he had not said something sooner, and he said he just realized on that day that he couldn't.

This is after he had been assigned out for trial.

The Court: Are you ready to go ahead?

Mr. Todaro: Not now.

The Court: There is going to be serious action by me if there is any delay as a result of this switch. I am not going to give a defendant an adjournment for a last minute switch in counsel, and I have under consideration serious action against Mr. Solomon. I think that is a very reckless way to treat this Court.

Mr. Todaro: As far as Mr. Solomon, he should (4) have